

IN THE HIGH COURT OF SINDH AT KARACHI

Const: Petition No. S-887 of 2025

Petitioner Abdul Salam	:	Through Ch. Muhammad Rasheed Gujjar, Advocate
Respondent Akbari Bibi	:	Through Mr. Naseer Shah, Advocate
Dates of Hearing	:	06.04.2026 & 24.08.2026
Date of Judgment	:	14.09.2026

J U D G M E N T

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioner has assailed Order dated 31.08.2024 passed by IXth Additional District Judge / MCAC, Karachi East, whereby he dismissed the Civil Revision Application No. 180/2024 filed by petitioner herein and maintained Order dated 25.07.2024 passed by IXth Senior Civil Judge, Karachi, East in Execution Application No. 11 of 2022, whereby he directed the respondent to reconstruct the wall between corridor of the suit property and extra land of 19. Sq. Yard occupied by the petitioner.

2. Briefly, the facts giving rise to the filing of instant constitutional petition, are; that respondent, Mst. Abkari Bibi filed Civil Suit No. 707 of 2018 in the Court of IX-Senior Civil Judge, Karachi East against petitioner, Abdul Salam, stating therein that she is lawful owner of House No.859 (Old No. H-64), Mohalla Ghosia Colony, P.I.B. Colony, District East, Karachi, admeasuring

33 square yards by virtue of Lease Deed No. 2649 dated 02.08.2000, registered in the Office of Sub-Registrar, K.M.C & Katchi Abadies, Karachi with Karachi Metropolitan Corporation, Directorate of Katchi Abadies. It was further stated that original lease documents of suit property are in possession of Zarai Taraqiati Bank Ltd. for Technology, Agriculture Fish Harbor Branch, Karachi, as the respondent/plaintiff had obtained loan from said bank by mortgaging the suit property. It was further asserted that the respondent/plaintiff is regularly paying utility bills. Earlier, the petitioner/defendant had filed Civil Suit No.40/2002 in the Court of IVth Senior Civil Judge Karachi, East, for declaration, cancellation of documents, possession and permanent injunction against respondent/plaintiff, which was dismissed for non-prosecution on 28.09.2005. It was further stated that respondent/plaintiff was enjoying possession of the suit property. According to her, in fact, on 05.10.2007, she had handed over possession of ground floor of the suit property temporarily to the petitioner/defendant, who is her real brother, on humanitarian, sympathetic grounds, he being her real brother, as he had no shelter at that time. Accordingly, the petitioner/defendant started residing on the ground floor of suit property along with his family. According to respondent/plaintiff, the petitioner/defendant disclosed himself as a tenant without any tenancy agreement. However, subsequently, the respondent/plaintiff requested the petitioner/defendant to vacate ground floor of the suit property, but no heed was paid to such request by him. Rather, the petitioner / defendant filed another civil suit bearing No.1173 of 2017 for declaration, cancellation of documents, possession and permanent injunction against the respondent / plaintiff; however, plaint in said suit was rejected under Order VII Rule 11 CPC by the Court vide Order dated 22.01.2018. Despite this, he failed to vacate ground floor of the suit property and remained in illegal and unlawful possession thereof. In the circumstances, the respondent / plaintiff demanded from the petitioner / defendant to pay at least rent of the house in his possession from 10.10.2007 at the rate of Rs.10,000/- per month, which was also not done by him. According to the respondent / plaintiff, the petitioner/defendant is a greedy person and wants to usurp the property of the respondent / plaintiff. It was further stated that on 22.01.2017, respondent/plaintiff moved a complaint before the concerned SHO against the petitioner/defendant which was subsequently converted into the proceedings under Sections 107/117 Cr.P.C vide Case No.238/2017 before

the XXVIIIth Judicial Magistrate, Karachi East. The respondent/plaintiff also filed Petition No.27/2017 which was dismissed by Vth Additional and Sessions Judge, Karachi East on 25.01.2018, hence she filed aforesaid civil suit, with the prayer to direct the petitioner / defendant to handover peaceful and vacant possession of the suit property to the plaintiff.

3. Upon service of summons, petitioner/defendant filed written statement, wherein he denied contents of the plaint being false, baseless and vexatious. According to him, deceased parents of the parties namely, Muhammad Suleman @ Sallo s/o Abdullah @ Dillo and Mst. Shakoori w/o Muhammad Suleman, were the owners of House in dispute, admeasuring 33 square yards, and it was situated in Katchi Abadi and was not leased out in their lifetime. It was further stated that on 29-11-1990 petitioner/defendant obtained gas connection from the Sui Southern Gas and also got electricity connection and installed electricity meter on the suit property in his name. Besides, on 28-07-1998 he paid the challan for lease in the Office of Katchi Abadies. According to him, water bill was also received from Karachi Metropolitan Corporation in the name of his deceased father. It was further stated that during the trial of Civil Suit No.40/2002, a mutual settlement was arrived at between the parties, therefore the case was dismissed for non-prosecution, but after dismissal of said suit, respondent/plaintiff again started harassing and humiliating the petitioner/defendant. According to him, he alongwith his parents got solemnized marriage of respondent/plaintiff and after *rukhsati* she had been residing with her husband but after a family dispute, she left her husband's house and started residing in the house of the petitioner / defendant and due to love and affection, he and his parents gave permission to her and handed over possession of a single room at upper portion of the suit property to her. However, thereafter, the matter between the respondent/plaintiff and her husband was patched up and both of them started living in said room. According to him, the object of the respondent/plaintiff is only to usurp the entire property of their deceased parents alone. He lastly prayed for dismissal of the suit.

4. After framing the issues, recording of evidence and hearing the arguments of Advocates for the parties, trial Court decreed the suit vide judgement and decree both dated 31.08.2022 to the extent of recovery of possession of the suit property.

5. Thereafter, the respondent / plaintiff filed Execution Application No.11/2022 for the satisfaction of aforesaid judgment and decree; however, during pendency of the proceedings of said execution application, petitioner / defendant / J.D. being aggrieved by the judgment and decree dated 31.08.2022 passed by the trial Court preferred Civil Appeal No.236 of 2022 before the Court of IXth Additional District Judge / MCAC Karachi East stating therein that respondent Akbari Bibi under the garb of decree, wants to obtain entire ground floor, which also included 19 sq. yards excessive land, which was in possession of petitioner / J.D. Said appeal was ultimately allowed vide judgment dated 08.05.2023 with the direction to the trial Court to amend the impugned decree and include the details of suit property specially, its measurement, for which decree has been passed and bring it in conformity with the impugned judgment and then execute same in accordance with the judgment.

6. Consequent upon remand, the Trial / Executing Court after calling reports from concerned authorities, vide Order dated 25-07-2024, directed the respondent / decree holder to reconstruct the demolished wall in between the corridor of suit property and extra land of 19 sq. yards, allegedly possessed by the petitioner / J.D. However, the petitioner / J.D. being dissatisfied with and aggrieved by said order, filed Civil Revision No. 180 of 2024 in the court of IXth Additional District Judge, Karachi East. After hearing the advocates for the parties, said revision application was dismissed by Order dated 31.08.2024 holding that order of Trial Court / Executing Court is justified in the circumstances and that the trial Court has not committed any jurisdictional error or illegality. The petitioner / J.D. has assailed said revisional order by means of instant constitutional petition.

7. I have heard arguments advanced by learned counsel for the parties and perused the material made available before me on the record.

8. The main contention of learned counsel for the petitioner is; that the Trial / Executing Court could not understand the actual grievance of the petitioner and without considering claim of the petitioner in respect of his possession over 19 sq. yards excessive land, has erroneously issued direction to the respondent / decree holder to reconstruct the wall between suit property and extra land of 19 sq. yards, because in such an eventuality his

entrance and access to his said extra land would be blocked. It was further submitted that, in fact, respondent / plaintiff under the garb of the decree issued in her favour in the civil suit filed by her, wants to usurp entire property which also includes 19 sq. yards extra land adjacent to the suit property, which is in his possession. It was further submitted that the Revisional Court also failed to apply its judicious mind to main issue and has dismissed the revision application filed by the petitioner in a hasty and mechanical manner. It was further submitted that while passing the impugned orders, both Courts below have not properly taken into consideration the factual and legal aspects of the case. It was further submitted that the reports submitted by the Nazir and KMC officials were also misconstrued while passing the impugned orders.

9. Conversely, it was submitted by the learned counsel for the respondent that concurrent findings of two courts below cannot be interfered with by this Court in exercise of its constitutional jurisdiction. It was further submitted that even otherwise, the orders of two courts below have been passed after giving due consideration to the factual and legal aspects of the case. It was submitted that the impugned orders are well-reasoned, hence do not warrant any interference by this Court. It was further submitted that the Executing Court cannot go beyond the decree passed by the trial Court, as such, two courts below rightly passed the impugned orders. It was lastly prayed that instant petition being not maintainable being meritless, may be dismissed.

10. It appears that main grievance of the petitioner / J.D. is; that the Trial / Executing Court could not understand the actual grievance of the petitioner and without considering his claim in respect of his alleged ownership over 19 sq. yards extra land adjacent to the suit property, has erroneously issued direction to the respondent / decree holder to reconstruct the wall between the suit property and the extra land of 19 sq. yards, because in such an eventuality his entrance and access to his said extra land would be blocked.

11. It appears that even the revision application was filed by the petitioner only against aforesaid direction of the trial Court issued to the respondent / Decree Holder to reconstruct the intervening wall, otherwise petitioner did not have any objection to the satisfaction of the decree to the extent of 33 Sq. yards land. In the opening para of the Revision Application, the petitioner

stated, "Being aggrieved by and dissatisfied with the order 25.07.2024 in which the respondent No.02 passed order **for re-construction of the wall by stuck-up the main entrance of the appellant....**". Besides, in Clause (D) of the Grounds of the Revision Application it was stated, "That learned Trial Court has failed to understand that the appellant has **agreed to hand over the 33 Sq. yards land which is the property of the respondent No.01** but the respondent No.1 want to usurp the property of the appellant and she will try to get possession illegally." In the circumstances, I shall confine myself to adjudicate upon the point; as to whether the trial Court rightly issued direction to the petitioner to reconstruct said wall and as to whether the Revisional Court rightly affirmed such direction?

12. It seems that after remand of the case, the trial Court appointed Nazir of the Court as Commissioner to measure and demarcate the ground floor of the suit property, admeasuring 33 square yards. Accordingly, after conducting inspection and required measurement, he submitted his report dated 02-12-2023 stating therein that upon measurement, it was found that the property was consisting of 18 feet on the southern side, 12 feet on the northern side, 21 feet on the western side, and 14 feet & 8 inches on the eastern side, with extra land included in the property and a staircase to the first floor built on the extra land.

13. It seems that the measurement of suit property has also been mentioned in the indenture of lease and layout plan, which affirm Nazir report in respect of size and boundaries of the suit property. The assertion made in the Nazir's report with regard to the extra land in the property also matches with the report of Karachi Metropolitan Corporation's (KMC) which confirmed that a 6-feet wide lane was encroached upon. In these circumstances, it was held by the Trial / Executing Court that the petitioner / J.D has no valid claim over 33 square yards of the suit property. As per settled law, the Executing Court cannot go beyond the original decree which, in instant case, is only to the extent of 33 square yards and, thus, the claim of J.D. in respect of extra 19 square yards cannot is not included therein

14. So far as the ground taken by the petitioner/defendant that the trial Court has wrongly directed the respondent / decree holder to reconstruct the wall in between the corridor of suit property and extra 19 sq. yards land is

concerned, it appears from perusal of Nazir's another report dated 07-11-2022, that there was a wall between the corridor and open area but same has been demolished and according to the respondent / D.H. it was done by the petitioner / J.D. From such fact, it is quite apparent that after passing of judgment and decree, both dated 31-08-2022, the petitioner / J.D. made significant changes in structure of the suit property in order to achieve access to 19 square yards extra land which was in his possession. Such fact also achieves strength from the fact that it is the petitioner / J.D., and not the respondent / D.H., who has become aggrieved by reconstruction of said wall.

15. Admittedly, the suit filed by the plaintiff / respondent was decreed in her favour to the extent of recovery of possession of suit property measuring 33 sq. yards. It is also an admitted position that the petitioner / defendant during his pleadings, stated that he has no objection to the satisfaction of the decree to the extent of 33 sq. yards; however, his grievance is that under the garb of the decree, the respondent / plaintiff wanted to occupy entire structure which also included extra / excessive land of 19 sq. yards possessed by him, and that if the wall is constructed in between the corridor of the suit property and his excessive land of 19 sq. yards, then his way to access said extra land in his possession, shall be totally blocked, hence the order passed by the appellate court and directing the respondent / plaintiff to reconstruct said wall and the order passed by the revisional court affirming such order, are illegal and unlawful and opposed to interest of justice and equity.

16. It may be observed that it is well settled principle of law that Executing Court is bound to follow the decree in letter and spirit and cannot go beyond the same. In instant case, as stated above, the decree passed in favour of the plaintiff / petitioner is to the extent of 33 sq. yards. So far as aforesaid excessive land of 19 sq. yards allegedly in possession of the petitioner / J.D. is concerned, during the trial the petitioner could not produce any title / ownership document in respect of said excessive land and it seems that said land has been encroached upon by the petitioner / J.D. In these circumstances, the Court cannot come to his rescue in order to facilitate him in gaining access to said encroached land. *Needless to emphasize that the courts are not obliged to become privy to and/or to function in aid of an illegal act/activity which, on the face of it, seems to be inconsonant with the legal norms.*

17. In the case reported as **MUSHTAQUE AHMED Vs. SHAHZAD KHAN (PLD 2024 SC 960)**, it was held by Honourable Supreme Court as under:

“It is a well-settled exposition of law that the executing court cannot go beyond the decree; neither can it rescind nor modify the decree/order sought to be executed.”

18. In view of this legal position, the Revisional Court rightly declined to accede to the prayer of the petitioner / J.D. for setting aside the order of Appellate Court whereby the respondent / D.H. was directed to reconstruct the wall in between the corridor of the suit property and the excessive land of 19 sq. yards occupied by the petitioner.

19. Even otherwise, it is now well settled that **only in exceptional circumstances**, concurrent findings of two Courts below could be interfered with by this Court in exercise of its extra ordinary constitutional jurisdiction. In this context, reference may be made to the recent judgment passed in the case of *BANK ALFALAH LIMITED through authorized representatives Vs. FEDERATION OF PAKISTAN through Presidential Secretariat & 3 others*, reported in **2026 CLD 569 [Sindh]**, wherein a Division Bench of this Court held as under:

“14. Now, there are concurrent findings recorded by both the forums below on facts of the case. In the constitutional jurisdiction unless those findings are shown to be rooted in illegality, perversity, or a result of a consideration based on extraneous circumstances or an outcome of mis-appreciation of facts or wrong interpretation of law, a different view cannot be taken.”

20. Upshot of above discussion is that instant constitutional petition challenging concurrent findings of two Courts below, being not maintainable, is also devoid of merits. Accordingly, it is hereby **dismissed**.

Karachi.

Dated. 14.09.2026

Approved for Reporting.

**JUDGE
HEAD OF CONST. BENCHES**